

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Case No. 1:23-CV-11195-SHS

**DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO PLAINTIFFS'**  
**MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to this Court's Individual Rules and Practices 5(B), Defendant Microsoft Corporation responds to Plaintiff The New York Times Company's ("NYT") Motion for Leave to File Under Seal (ECF No. 203) filed in connection with NYT's letter motion to compel ("Letter Motion") (ECF No. 204). For the reasons stated below, Microsoft respectfully requests the Court grant Plaintiffs' motion for leave to file under seal.

"The presumption of public access [to judicial documents] can be overcome only by specific, on-the-record findings that higher values necessitate a narrowly tailored sealing." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126 (2d Cir. 2006). "The proponent of sealing 'must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir.1987)).

NYT's Letter Motion contains quotations from and descriptions of confidential and highly confidential documents, the disclosure of which would unfairly prejudice Microsoft. Specifically, the last sentence on page 2 of the Letter Motion quotes Exhibit 15 thereto. Exhibit 15, which was

marked “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” pursuant to the Protective Order that was entered in this matter (ECF No. 127), contains highly confidential information about ongoing work between OpenAI and Microsoft, as well as other Microsoft proprietary information. *See* Ex. 1 (Declaration of Dee Templeton). Microsoft requests that this sentence be redacted and sealed from the public and that Exhibit 15 be sealed in its entirety.

The information contained in Exhibit 15 and quoted in NYT’s Motion is the type of information commonly found to warrant sealing. *See Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the attached Declaration of Dee Templeton, Microsoft respectfully requests that NYT’s Motion for Leave to File Under Seal (ECF No. 203) be granted. Specifically, Microsoft requests that Exhibit 15 and any sentence that quotes from it in NYT’s Letter Motion be sealed.

Dated: August 19, 2024

By: /s/ Annette L. Hurst

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